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IN THE

Supreme Court of the United States

OCTOBER TERM 1954

No. 139

PAUL A. STRAUB & CO. INC.,

Petitioner,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

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June 1954

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The petitioner, Paul A. Straub & Co. Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Customs and Patent Appeals entered February 3, 1954, rehearing denied March 23, 1954, reversing a judgment of the United States Customs Court, First Division, affirming a judgment of Judge Johnson sitting in Reappraisement.

Opinions Below.

The opinion of Judge Johnson sitting as the trial court of the United States Customs Court (R. 9-15) is reported in *Paul A. Straub & Co. Inc.* v. *United States,* 27 Cust. Ct. 442, R. D. 8047.

The opinion of the First Division of the United States Customs Court sitting in review (R. 18-23) is reported in *United States* v. *Paul A. Straub & Co. Inc.,* 30 Cust. Ct. 619, A. R. D. 20.

The opinion of the United States Court of Customs and Patent Appeals is reported in *United States* v. *Paul A. Straub & Co. Inc.,* 41 C. C. P. A. (Customs) .... C. A. D. 553, 89 Treas. Dec. Advance Sheets No. 14, page 47, rehearing denied March 23, 1954, 89 Treas. Dec. Advance Sheets No. ....., page .....

Jurisdiction.

The judgment of the United States Court of Customs and Patent Appeals was originally entered on February 3, 1954 (R. 34). Motion for rehearing was denied March 23, 1954 (R. 52). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1256.

Question Presented.

Where goods are offered for sale in the principal market at a price which also includes a charge for the inland freight to the port of exportation, does the definition of export value in Section 402(d), Tarriff Act of 1930 require such charge to be considered part of the dutiable value of the goods?

Statute Involved.

The provisions of Section 402(d), Tariff Act of 1930 (19 U. S. C. A., Sec. 1402) are set forth in the appendix (*infra*, p. 7).

Statement.

Petitioner imported certain decorated chinaware ornaments purchased from the manufacturer at his factory in Selb-Stadt, the principal market in Germany, on an F.O.B. Bremen basis. Included in the total invoice price was a charge of R.M. 91.80 covering inland freight from the factory to the sea-port of Bremen.

In entering these goods, the petitioner deducted this charge claiming it was a non-dutiable item. The appraiser, however, included it as part of the dutiable value of the goods. Upon appeal to reappraisement, the case was submitted for decision upon an agreed statement of facts (R. 7, 8) establishing that on the date of exportation such or similar goods were freely offered for sale to all purchasers in the principal market of Germany for exportation to the United States including all costs and charges incident to placing the goods in condition packed ready for shipment to the United States at the F.O.B. Bremen prices appearing on the invoice which included an item of R.M. 91.80 costs for freight Selb-Stadt F.O.B. Bremen.

Judge Johnson held that the item of inland freight was a non-dutiable charge and formed no part of the export value of the goods since it was a charge arising after the principal market and was in addition to all the charges enumerated in the statute as dutiable.

Upon application for review the First Division of the United States Customs Court affirmed the judgment of the trial court in all particulars.

Upon appeal, The United States Court of Customs and Patent Appeals reversed the judgment of the United States Customs Court and held that the charge for inland freight

formed an integral part of the statutory value of the goods and was a charge in the principal market prior to shipment and did not accrue subsequent to shipment.

Reasons For Granting Petition.

1. The United States Court of Customs and Patent Appeals decided an important question of federal law in a way which apparently is in conflict with an applicable decision of this Court.

The definition of export value in Section 402(d) is a definition of value at a certain place—namely in the principal market of the country of exportation.

> *Stairs* v. *Peaslee,* 59 U. S. 521;
> *Jenkins* v. *United States,* 34 C. C. P. A. (Customs), 33 C. A. D. 341.

A principal market is where sales are made as distinguished from the place of delivery.

> *United States* v. *Haviland,* 167 Fed. 414, aff'd 177 Fed. 175, Cert. denied 216 U. S. 618;
> *Jenkins* v. *United States, supra.*

Since the year 1883 a charge for inland freight from the principal market to a port of exportation has never been included as part of the *statutory* definition of export value.

> *Robertson* v. *Bradbury,* 132 U. S. 491;
> *United States* v. *Bauer,* 3 Ct. Cust. Appls. 343. T. D. 32627.

Countless adjudications of the courts in customs cases have thereafter held that any charge occurring or arising after the principal market forms no part of dutiable value.

United States v. *Zuricaldy,* 71 Fed. 955 (ocean freight);
Carl Grubnam v. *United States,* T. D. 13755, G. A. 1949 (go-down charges);
James P. Smith v. *United States,* T. D. 13239, G. A. 1660 (lighterage);
F. W. Myers v. *United States,* 69 Treas. Dec. 1548, R. D. 3865 (loading or packing or conveyances);
United States v. *Rice,* 5 Ct. Cust. Appls. 228, T. D. 34472 (inland freight).

Charges, including inland freight arising after the principal market have consistently been held to be non-dutiable even where the terms of sale were F.O.B. port of exportation or C.I.F. United States port and where the invoice price included such charges.

United States v. *Wm. A. Foster & Co. Inc.,* 34 C. C. P. A. (Customs) 9, C. A. D. 336;
United States v. *Lyons,* 13 Ct. Cust. Appls. 639, T. D. 41484;
United States v. *Philips Co.,* 7 Ct. Cust. Appls. 497, T. D. 37110.

Not since 1883 by statutory definition, nor at any time by judicial decision has a charge for inland freight from the principal market to a port of exportation been considered part of dutiable value. By reason of the decision of the Court below the intent and meaning of the statute is in a state of confusion.

2. The decision of the United States Court of Customs and Patent Appeals casts grave doubts, both from the standpoint of the proper administration of the customs

laws and from the standpoint of the American importer, on the dutiable status of many charges which commonly arise in connection with imported goods.

American importers buying in a foreign country naturally are interested in getting their goods out of the country and it is common commercial practice for goods to be sold F.O.B. port of exportation or C.I.F. United States port. Export value has always been a frequent basis of valuation, and under proposed legislation may well become the most common basis.

3. The case at bar is a test case positing an issue of continuing importance. There are currently pending in the United States Customs Court in excess of fifty thousand cases, filed by many hundreds of importers, involving this precise point.

CONCLUSION.

It is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN D. RODE,
Attorney for Petitioner.

Appendix.

Section 402(d) Tariff Act of 1930 (19 U. S. C. A., Sec. 1402):

"EXPORT VALUE—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States."